LAND BORDERING ON LAKE—ANNUAL EBB AND FLOW—SAPP v. FRAZER ET AL., 26 S. Rep. 378 (La.).—The plaintiff appealed from a judgment for defendants, in which he prayed for an injunction restraining the defendants from taking grass from the bed of a lake of which the plaintiff claims riparian ownership. *Held*, that the temporary uncovering of parts of the bed of the lake by recurring annual ebb of the waters, which became covered again by their rise or flow, does not constitute derelicton.

This case is novel, yet there are decisions at variance. It is correctly held that the United States has determined that the question of whether the lands forming the beds of the waters belong to the State, or to the riparian owners, depends entirely upon the law of the State where the lands are. *Hardin* v. *Jordan*, 140 U. S. 371. The court in this instance held according to the Code which follows the English rule, that there could be no dereliction. *Zeller* v. *Yacht Club*, 34 La. An. 839.

NEGLIGENCE — ELEVATORS — DEGREE OF CARE NECESSARY. SAVAGE v. JOSEPH H. BAULAND CO., 58 N. Y., Supp. — An elevator, of standard make and fully equipped with all the latest safety appliances, and regularly inspected, became stalled between the second and third floors of a building while a number of passengers were aboard. Several unsuccessful attempts were made to remove the obstruction, which proved to be a piece of bunting used in decorating the car a short time previously. The feasibility of cutting the cage was considered, but abandoned. All efforts to start the car by means of levers proved unavailing. The engineer finally sent h s assistant to the top of the shaft to slacken the ropes, taking no precaution to prevent the fall of the car in case the ordinary safety appliances failed to work. The trial court submitted the question to the jury, with the statement that defendant owed plaintiff the duty of operating its elevator with the "highest degree of care and skill." There was no emergency, for the car was fast, and likely to remain so unless disturbed by considerable force. Was there such an emergency as would allow the engineer to use his best judgment as to what was necessary to avoid an accident? Had the defendant any right to try experiments without taking every precaution for the safety of the passengers? Clearly not. In *McGrell* v. *Building Co.*, 153 N. Y., the court says: "The requirement of the greater degree of care is dependent, not so much on the actual apprehension of danger as upon the consequences likely to result from a defect in machinery and appliances. In cases where less serious results are to be expected and in cases where danger is to be apprehended, if due and proper care is observed by the passenger, the owner is responsible only for want of ordinary and reasonable care." This, it held, applied as well to machinery and manner in which it was operated as to other causes from which injury might result. The defendant should have taken every precaution reasonably possible, and having failed in its duty must answer to those whc have suffered through its negligence.

OBSTRUCTION OF SIDEWALK—NEGLIGENCE.—TOMPKINS v. U. H. RY. CO. ET AL., 43 Atl., Rep. 885 (N. J.).—Plaintiff, passing in front of stables owned by one of defendants, was injured by falling of bale of hay, which had been purchased by said defendant, and was being unloaded from wagon of another of defendants. *Held*, that abutting property-owners on street have right to temporarily obstruct street for unloading of merchandise to such extent as is absolutely necessary; and are not bound to furnish safe passage around such obstruction to passers-by.

In the initial case of *Rex* v. *Russell*, 6 East. 427, it was declared that while a proprietor might make such use of the street as the transaction of his business demanded, yet if resulting obstruction of traffic was so often repeated as to operate as a permanent obstruction, he was liable and must

seek such place of business as would not necessitate such hindrance and menace to ordinary traffic. In this country two very similar cases enunciate the same principles: that the obstruction must occur in transaction of business, must be necessary, and must be *temporary;* that the right of obstruction must be exercised in a reasonable manner. *Welch* v. *Wilson*, 101 N. Y. 254; *Jochem* v. *Robinson*, 66 Wis. 638. This right of obstruction is so well determined that in several American cases it has been said decisively that the obstructor is under no duty of furnishing a safe passage around the obstruction.

RAILROADS—AGE AS AFFECTING CONTRIBUTORY NEGLIGENCE — ATCHISON, T. & S. F. RY. v. HARDY, 94, F. R. 294.—*Held*, that plaintiff, a boy of 14, could recover damages, although he was injured while negligently upon defendant's tracks.

In this case one of the most important considerations was the boy s age as determining whether he was guilty of contributory negligence. This case properly belongs to that class designated by the legal profession as "turntable" cases and upon which there is a direct conflict of authority. The English rule, which seems to be the better, is followed by the New York Court in *Mangam* v. *Brooklyn R. R. Co.*, 38 N. Y. 45. The same ruling was followed in *Birge* v. *Gardner*, 19 Conn. 511, where the plaintiff, an infant of seven years, failed to recover for injuries sustained while trespassing on defendant's property.

SALE OF GOOD-WILL OF BUSINESS — STIPULATION AGAINST COMPETITION.— CORWIN v. HAWKINS, 59 N. Y. Sup. 603.—One partner, on selling his interest as a plumbing and gas-fitting business to his co-partner, agreed not to engage in that business in the same village for the term of five years. Afterward solicited plumbing for another, though he had no pecuniary interest in the business. *Held*, a violation of his contract.

The decision in this case is not based on the fact that the partner was thus secretly carrying on a business under another name, but that the solicitation of business for another is a violation of a contract not to carry on that business. The intention of the contract was to prevent the defendant from entering into and building up another similar business. Solicitation of business for another is building up business for that other, and so a violation of the contract. From the Dyer's case in 2 H. 5 (Pasch fo. 5 pl. 26), where Hull, J., lost his temper, up to a very late date, the tendency of the courts has been to allow the presumption, which exists against the validity of a contract in restraint of trade, to run also against the party receiving the benefit of the covenant of restraint. Though judging a particular contract in partial restraint valid, the remedy would be very reluctantly granted on its breach. In *Grimm* v. *Warner*, 45 Iowa 106, where the sale was of "the business and good-will thereof, and I agree not to engage in the ice business in Iowa City," the lower court held that "his personal employment in a rival establishment" would constitute a violation, but was overruled by the Supreme Court, which made the fact that "he had no part in bringing into existence the rival establishment" the pivotal one. But here we think a step is taken on the best grounds. A person selling the good-will agrees in substance to withdraw himself and his influence, not merely his name, from competition. When he solicits business from another he violates such agreement.

UNFAIR COMPETITION—PRELIMINARY INJUNCTIONS—NATIONAL BISCUIT CO. v. BAKER ET AL., 95 Fed. Rep. 135.—"Uneeda," as applied to a biscuit, is a proper trade-mark, and the proprietor is entitled to an injunction against the use of "Iwanta" by another manufacturer as the name of a similar biscuit put up and sold to the trade in packages so similar as to deceive consumers.

This is in accordance with the decision of the United States Circuit Court in the case of *N. K. Fairbank* v. *Central Lard Co.*, 64 Fed. Rep. 133. The law is so plain on this subject that it is surprising to find so much litigation over it.